Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Dr. J. DANIEL KANOFSKY ,M.D., M.P.H.
Dr. ALVIN KANOFSKY , PhD. - PETITIONERS

Vs.

STARK AND STARK.
A PROFESSONAL CORP - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT ENTERED IN TRENTON, NJ, No.60,575

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Introduction:

Petitioner's deceased older brother, Dr. Paul B. Kanofsky, was responsible for monitoring the billing records of the University of Medicine and Dentistry of New Jersey (UMDNJ), a quasi state institution.[1] In 1993, after ten years of exemplary service at this task, the University transferred him to another job with a desk in a basement cubicle next to noisy heating pipes, harassed him, and eventually fired him when he was terminally ill with cancer. In a four hour argumentive termination hearing, they threatened to "fight tooth and nail" to prevent him getting any benefits, if he wouldn't sign a waiver not to sue. He refused and died of cancer six weeks after this hearing.

The petitioners are his two surviving brothers and executors of his estate. They filed a law suit in the 3rd Circuit Federal Court for wrongful termination, discrimination because of disability (he had a paralyzed right arm from childhood polio and later developed a clinical major depression shortly after his job transfer), and age. As well they filed for wrongful death, and for whistle blowing.

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[1] It is worth noting that UMDNJ was represented by the New Jersey State Attorney General for the first five years when the Petitioners were suing them. The State Attorney General stopped representing them in 2001for reasons that they refused to disclose.

As is well known nationally, UMDNJ is now under federal supervision for fraud and corruption, with Judge Herbert Stern acting as a federal monitor. It was learned with the investigations undertaken by the U.S. Attorney for New Jersey, Christopher Christie, and the Federal Monitor, Judge Herbert Stern, that UMDNJ doubled and tripled their Medicare and Medicaid charges after Dr. Kanofsky was relieved of his oversight duties on billings.

Other fraudulent and corrupt activities they engaged in were bribing numerous NJ Legislators, having illegal hospital referrals, and using hospital funds for personal benefit.

In the Petitioners' case, over many years of litigation over benefits and depositions concerning the claims of the law suit, the case was summarily dismissed by Judge Dickenson R Debevoise in 2001, under questionable circumstances. The Petitioners have since learned that at the same time, there was another whistleblower case that had quietly settled.

Undaunted, the petitioners hired new lawyers, Stark and Stark of New Jersey, to handle the appeals, first to the 3rd Circuit Court of Appeals, and then to the U.S. Supreme Court. Unfortunately, Stark and Stark omitted many of the original claims in the appeal, charged much more than the agreed on contract amount(they had assured Petitioners the amount would not exceed $15,000 –it eventually exceeded

$43,000), and eventually, after losing the Appeal to the 3rd Circuit, would not submit the Petition for Certiorari to the U.S. Supreme Court, even though they claimed to have done all of the work on it, without full payment of the the amount that they claimed was due.

The Petitioners, with great difficulty, were able to file a Petition for Writ of Certiorari to this court in June of 2003, Docket No. 02- 01818, within the deadline for filing.

The petitioners filed a grievance complaint against Stark and Stark with the the N. J. State Ethics Committee, under the supervision of the N. J. Supreme Court. Stark and Stark filed a complaint about one month after the filing of the Petitioners' Grievance Complaint. The Petitioners did not respond to the complaint because of the confidentiality requirements of the Ethics investigative process.

Finally, in September 2004, Stark and Stark obtained a judgment by default. Then, August 19,2005 they obtained an order to turn over funds in the amount of $36, 786, and at that time the Petitioners entered the case with a brief and motion to vacate the judgment, and followed with additional motions in response to the Superior Court rulings.

Despite what should seem to be compelling reasons, all of these briefs and motions were disregarded by the New Jersey Superior and Upper Courts.

Questions Raised

1. Was due Process Followed?

The court and Stark and Stark totally ignored due process in taking the funds from the petitioners. The rules and regulations of the court and those of the state were totally ignored in seizing the funds from the petitioners. The 5th and 14th Amendment of the Constitution state that due process must be followed if property is to be taken from an individual.

2. Was there Proper Service?

Proper Service was not made on the petitioners with the initial complaint, with out of state service, the levy on the funds, and the order to turn over funds. The court totally disregarded these facts in violation of the recent Supreme Court Ruling on Jones vs. Flowers.

3. Did the State Judicial System system act to block due process?

The ethics committee of the state acted with Stark and Stark to block the petitioners' efforts to discipline them and to seize the funds from the petitioners.

4. Did the State Courts Deny the Petitioners any opportunity to present their objections to the Court's Actions?

Again, as stated in Jones vs. Flowers, the Court ruling emphasized that the defendants should have the opportunity to present their objections to the actions of the courts.

For example, on the day that the Order to Turn Over Funds was ruled on by the court, Alvin Kanofsky was undergoing treatment for a hemorrhage of his right eye and was unable to attend the court hearing. Daniel Kanofsky was in contact with the court clerk by phone and was told that the Petitioners' physical presence along with brief and motion was required and that a fax message requesting a continuance or motion would not suffice.

5. Did the state courts deny due process because the Petitioners were acting pro-se?

Were the Petitioners denied due process because they were acting Pro-Se? The state courts' blatant disregard for the rules, regulations, statutes, and evidence indicates that they felt the Petitioners were powerless to retaliate and protect themselves from abuses of the court and its discretion

6. Did the state judicial system retaliate for the whistle blowing activities of the petitioners with the UMDNJ case?

As, stated previously, The Petitioners' deceased older brother monitored the billing records of the

University of Medicine and Dentistry of New Jersey (UMDNJ) from 1984-93. In 1993, he was removed from these duties and transferred to a basement cubicle under terrible working conditions, and then brutally fired under false pretenses. He had found irregularities in the billing system, and they needed to remove him from monitoring the system. UMDNJ twelve years later is now under federal supervision operating under a deferred prosecution agreement for fraud and corruption. It was recently discovered that after the petitioners' brother was removed from his task, UMDNJ doubled and tripled the Medicare and Medicaid charges.

We believe that the state and its administrative and judicial bodies acted with UMDNJ to perpetrate the illegal practices, and that the state judicial system is retaliating back at the petitioners for their whistle blowing activities.

Our actions to file a lawsuit back in 1996, less than two years after Paul was fired because of his whistle blowing activities and well before any one else had made whistle blower claims, are now vindicated.

7. Did the State judicial system support, Stark and Stark's actions to prevent the petitioners from presenting their arguments to the U.S.Supreme Court?

Stark and Stark halted work on their petition to the U.S. Supreme Court just before they were to submit the Petition

for Writ of Certiorari. They could easily have submitted the Petition based on the work they had already done and had claimed to have done. The Petitioners had to submit the Petition themselves under an extremely short deadline. This was Supreme Court Case Docket Number 02 –01818, submitted June 2, 2003.

The State courts and Ethics Committee (under the State Supreme Court) totally disregarded any malfeasance in regard to Stark and Stark's actions on this matter.

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JURISDICTION

Stark and Stark attorneys, McDonald and Lehman, served as Petitioners' attorneys on appeal of 3rd Circuit District Federal Court wrongful termination, wrongful death, discrimination, and whistleblower case of Petitioners' deceased brother. This case was brought against the University of Medicine and Dentistry of New Jersey (UMDNJ). They omitted numerous charges in the original complaint, and included some charges only with the insistence of the Petitioners. The appeal was turned down by the Third Circuit Court of Appeals. Fees far exceeded contractual amounts and they breached contract by not consulting and getting Petitioners' approval to increase the charges.

Stark and Stark pulled out of the case when they were about to petition the U.S.Supreme Court for a Writ of Certiorari when Petitioners did not pay excessive charges.

The Petitioners filed a grievance with the state ethics committee, and the respondents filed a complaint in Essex County Superior Court requesting charges, and after two years obtained, September 24, 2004 a Default Judgment, and then executed judgment with an Order to Turn over Funds August 19, 2005, despite Petitioners filing briefs and motions objecting to these in a timely and proper manner, and despite improper procedures and improper service on the Petitioners. Two motions to overturn and vacate the judgment were denied by Judge

Paul Innes of Mercer County Superior Court on September 9, 2005 and October 12, 2005.

Petitioners then appealed to the Superior Court, Appellate Division March 17, 2006. A court hearing before a two judge panel was then held on October 30, 2006, and a decision denying the appeal was issued November 17, 2006

Then Petitioners then responded with a motion the Superior Court, Appellate Division, to Reconsider or Revise their Decision Of November 17 on November 27. This was denied without comment.

Petitioners then petitioned for Certification to the N.J. Supreme Court January 8, 2007 to review the decision. The N.J. Supreme Court rendered a decision on the Petition on February 21, 2007. The Original Order was filed on February 23, 2007. A corrected Order was filed on March 12, 2007. Petitioners have confirmed in discussions with both the Clerk's Office of the New Jersey Supreme Court and the Clerk's office of the U.S. Supreme Court on May 18, 2007 that the 90 day period runs from the date of filing of the corrected order

Petitioners are now submitting this Petition for Writ of Certiorari to the U.S. Supreme Court within the 90 day period allowed for submission after the order on the decision has been filed by the highest court of the State of New Jersey.

CONSTITUTIONAL AND OTHER STATUTORY CONSIDERATIONS

TABLE OF AUTHORITIES

REFERENCES

RULES OF N.J. COURTS

Rule 4:4-6 defendants	Service for out of state
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28 U.S.C. Sec.1654 – Right to Pro-Se representation

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Morristown Memorial Hospital v. Caldwell, 340, N.J. Super. 562, App. Division, 2001

Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306,313 (1950)

Winkelman v. Parma City School District, No. 05 – 983, U.S. Supreme Court, 2007

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STATEMENT OF CASE

I. Introduction;

This case is one of the aspects of twelve years of litigation against the University of Medicine and Dentistry of New Jersey (UMDNJ). The Petitioners' older deceased brother, Dr. Paul B. Kanofsky, was the Biostatistician overseeing their billing records for over a decade before his abrupt removal from this position in 1993. He was subsequently transferred to a basement cubicle with terrible working conditions, continually harassed, and given tasks that were difficult because of his disabilities. He had a paralyzed right arm due to childhood polio and major depression that he developed shortly after his work transfer. He eventually recovered from his major depression.

A year later, he was brutally terminated in an extended hearing October 1994, with all participants at that meeting aware that he was undergoing a medical evaluation of prominent tumors in his neck and other areas.. He died on December 10, 1994 from cancer.

The Petitioners subsequently sued UMDNJ in 1996 for wrongful termination, wrongful death, discrimination, and whistle blowing among other counts. Shortly after Paul Kanofsky was removed from monitoring the records,

it now has recently been confirmed by the ongoing federal investigation, overseen by the federal monitor, Judge Herbert Stern, that UMDNJ, unrestrained by Paul's careful scrutiny and monitoring of the records, began to double and triple bill for Medicare and Medicaid.

This case involves the performance of Stark and Stark, the law firm the defendants hired to handle the appeal to the original lawsuit against UMDNJ. This original lawsuit was summarily dismissed by 3rd Circuit Federal District Judge Dickinson R Debevoise in 2001 under questionable circumstances, after many years of depositions and legal actions.

The Petitioners claim Stark and Stark did not properly represent the petitioners in this appeal to the 3rd Circuit Court of Appeals, omitting numerous counts, and attempting to block their access to the U.S. Supreme Court. As well, they overcharged for their services, and breached their contract. These claims were made in a grievance complaint to the N.J. State Ethics Committee. Stark and Stark, shortly after the grievance complaint was filed, sued the defendants for $37,000 for their services.

The Petitioners claim not only that the performance provided by the Respondents was deficient and improper, but, among other things, that proper notification service to the Petitioners were not made. Proper notification service was not made to the Petitioner, Dr. J. Daniel Kanofsky, with the initial complaint. The address used was an incorrect address in Bethlehem, PA, rather than his correct

address, which Stark and Stark had previously been using, in Philadelphia.

All subsequent mailings for J. Daniel Kanofsky went to Bethlehem, PA. When a default judgment had been obtained by Stark and Stark against the Petitioners, the notification of a lien and writ of execution by the Sheriff's office was not sent to the Petitioners J. Daniel Kanofsky and Alvin Kanofsky. When an order to turn over funds had subsequently been obtained, no certified notice was received by the defendant, J. Daniel Kanofsky.

In their representations to the Superior Court, Stark and Stark fraudulently represented that all service had been properly made. The court accepted this as fact, even when the Petitioners subsequently made an appearance and disputed these claims. It is essential that proper service be followed, as a recent U.S. Supreme Court Ruling, Jones vs. Flower et al, 04 -1477 has determined.

Petitioners now enumerate where errors were made by the New Jersey Courts:

1. The Court erred in stating that proper initial service was made. The certified mail receipt card clearly shows that the wrong address was used, and the card was clearly marked that this was not the proper address. A copy of the certified mail receipt card is shown in Exhibit A of the Petitioners' Motion for Reconsideration.

2. There was no proper service nor any service at all made to either Petitioner by the sheriff that a lien and a freeze had been placed on all of J. Daniel Kanofsky 's funds in the Fidelity Account, which amounted to several hundred thousand dollars. There was never a confirmation of service given as evidence of proper service shown by the Respondents.

3. There was no confirming Certified mail receipt card that service had been made to J. Daniel Kanofsky for the Order to Turn over Funds. In fact, Alvin Kanofsky had returned this card stating that it was the incorrect address. There was never any confirmation of service shown as evidence of this by the Respondents.

4. Attorney Brosha, representing Stark and Stark, fraudulently represented to the court that proper service had been made in all these cases, when in fact no service or improper service had been made. Superior Court Judge Innes had no other evidence than Attorney Brosha's word that proper service had been made, and then gave 'proper service' in his decision as the reason for the Judgment. As well, Attorney Brosha was well aware that there was opposition in the case both through the Ethics Committee grievance and with letters to the court stating that Petitioners were in a grievance action – copies of which he received. Also, Attorney Brosha fraudulently represented that the grievance action was immediately dismissed.

5. Thus, the Judge Innes' judgment is based on fraudulent statements by Attorney Brosha and is thus incorrect. Judge

Innes's statements of his believing that proper service and procedures had been followed and that there was no opposition are shown in his Original Judgment Order to Turn Over Funds of August 19, 2006. He then refers back to this Order in his confirmation of the judgment in his response to the Petitioners' August 22 Motion to Vacate the Judgment. Judge Innes' September 9 order, demonstrating his dependence on Attorney Brosha's fraudulent statements, is given in his attached decisions, presented in the Appendix.

6. Legally compelling evidence as to the address of the Petitioner, J. Daniel Kanofsky, was provided by his appearing Pro-se on the September 19 Motion Objecting to the Decision of September 9. This motion had the proper address of the Petitioner on the front page of the motion, and his signature attached to the motion. As well, the revised appeal papers filed with the Superior Court of Appeals all contain his proper address with his signed confirmation that this was his proper address.

7. Also, legally compelling evidence as to the true address of the Petitioner, J. Daniel Kanofsky, was provided by statements in the Petitioners' original August 22 Brief and their accompanying Motion to Vacate, and then in their September 19 Motion Objecting to the Decision of September 9, and in their signing of all these documents, which, as in Federal Law, should serve as the confirmation of truth and veracity to the statements in the documents. Moreover, the Petitioners acting pro-se should be granted the benefit of some consideration as to their lack of

knowledge of special procedures required by this court. The principle of harmless error states such errors should be ignored for the sake of justice.

8.Originally, the Respondents claimed that the ethics grievance had been immediately dismissed. They now admit that it was considered and then supposedly dismissed May 12, 2004. In fact, the Petitioners appealed the ethics committee decision, and further consideration continued until July 19, 2005, when in a final letter the ethics committee indicated they were no longer considering the case. It was on this very day that Attorney Brosha then filed his Order to Turn over Funds, indicating he was awaiting a final decision by the Ethics Committee. It was only at that point, that Attorney Brosha, acting for the Respondent, filed his order to turn over funds.

9.As stated in previous briefs and motions, Proper service across state lines, as given by N.J. State Law, among other things, requires that the service be on the attorney for the defendant, not on another pro-se co-party to the case.

10. One year, as required by N.J. Rules of the Court, had not passed before the funds were turned over. The Court did not consider the extenuating circumstances of not replying in court on August 19, 2005, nor the Petitioners' entreaties to the court to obtain a continuance by fax on that day. The Petitioners could not appear because the right eye of the appellant, Dr. Alvin Kanofsky, had hemorrhaged and required medical treatment. Even so, Alvin Kanofsky, with great effort, got the brief and motion

to vacate the judgment in on the following Monday, August 22.

11. The U.S. Supreme Court has ruled that proper service is required. In a case recently decided on April 26, 2006, **Jones vs. Flowers et al, 04 - 1477** , the court ruled that it is essential that proper service be made in order to take property from an individual. This has not been true in this case in numerous instances. Not only were the initial complaint, notice of levy, and order to turn over funds not served or improperly served, every single letter to J. Daniel Kanofsky certified and not certified was also improperly served to the incorrect address.

12. The Respondents knew the proper address of the defendant J. Daniel Kanofsky was 325 F. Shawmont Ave, Philadelphia, PA just before they addressed him at 229 Church St., Bethlehem, PA improperly. All previous extensive correspondence to him had been at 325 F. Shawmont Ave., Philadelphia, PA. The total actions of the Respondents are indicative of mail fraud.

13. .With the court still denying that improper service was made in all instances, the Petitioners attached an Affidavit, Exhibit C, to the original Motion to Reconsider the November 17, 2006 Decision that the correct address of the Petitioner J. Daniel Kanofsky is presently and has always been for the past 10 years 325 F Shawmont Ave,

Philadelphia, PA ,19128. As well, the Petitioners had also attached to this Motion a sworn certification statement as to the truth and veracity of all the statements in this and all previous briefs and motions.

14. Judge Innes, in his September 19 Decision, refers back to and considers all of the previous briefs and motions that the Petitioners have submitted in this case, and thus his order and decision are based on all of the material presented, contrary to the statements in the opinion of November 17. As well, his first statement is that reconsideration is granted at the court's discretion and in the interest of justice, which is certainly the case for the Petitioners.

15. The Petitioners' underlying University of Medicine and Dentistry Case continues to get support from national publicity and notoriety . Just recently, another case of fraudulent actions by the University, where heart surgeons were put on the staff just to refer patients to the hospital, was uncovered by the Federal Monitor, Judge Herbert Stern. He only found out about it through reading of a Whistleblower Settlement in the Law Review. It was not reported to him by the head of UMDNJ, Dr. Vladeck, who is required by law to do so under the Deferred Prosecution Agreement that the hospital is presently operating under. This further jeopardizes the continued funding of the hospital.

16. As stated before, the Petitioners' brother, Dr. Paul Kanofsky, who was the first whistleblower in the case, was forced off of monitoring the hospital billing records in 1993, and he would have uncovered any improper billings. After they forced him out, the hospital doubled and tripled their Medicare billings.

17. As uncovered by Judge Herbert Stern and the U.S Attorney for New Jersey, Mr. Christopher Christie, the total amount of overpayments for Medicaid and Medicare and fraudulent billings and contracts now exceed a quarter of a billion dollars. Numerous indictments against UMDNJ administrators and N.J. State legislators have been handed down and are in process. As repeatedly presented in numerous newspaper articles, this is one of the major Medicaid and Medicare fraud and corruption cases in the country.

REASONS FOR GRANTING THE WRIT

1. **The case tests whether due process was followed.**

Was Due Process followed in taking the funds from the defendants? This is of great importance in our legal processes. Due process wasn't followed in the service beginning from the initial complaint, in the issuance of the Judgment, to the notification by the sheriff, to the order to turn over funds, and in the subsequent appeals to the Superior Appellate Court. It would set a dangerous precedent, if the court ruled that improper service was sufficient to take funds. Certainly, it would be at odds with the basic principles of the fifth and fourteenth amendments to the constitution, which require due process before property can be taken.

2. **The case tests whether property can be taken without proper Service.**

Again, this of great legal importance, as reaffirmed by the recent ruling by the U.S. Supreme Court, Jones v. Flowers No. 04 -1477, U.S. Supreme Court, 2006

3. **The case tests whether there is discrimination against pro-se litigants.**

Again this is of great importance both for legal aspects and as a matter of public policy. Litigants should be granted equal access to the courts if they choose to represent themselves, and their cases should be given a fair hearing in the courts, unlike how the Petitioners were treated. The number of pro-se litigants is increasing, and it is important to establish a legal framework for these cases. One prominent recent example is in the recent Supreme Court Case of the parents acting Pro Se in suing the School District for their child,in **Winkelman v. Parma City School District 05-983**, with this court ruling that the parents were allowed to sue since their rights were affected by the rights of their child. As the decision reads, "There is no question that a party may represent his or her interest in federal court (and in all courts) without the aid of counsel." **U.S.C. Sec1654** (In all courts of the United States the parties may plead and conduct their own cases personally or by counsel…")

4. **The case tests whether there was discrimination by the courts against Whistle Blowers.**

Again, this is of great importance both for legal aspects and for public policy. The whistle blowers serve an important function in maintaining the integrity of the organizations of which they are a part. Probably, the most

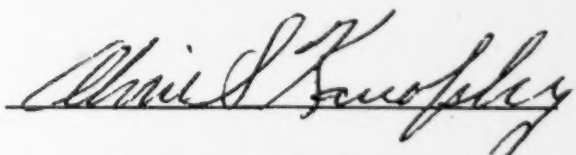
flagrant case of courts suppressing whistleblower cases occurred with UMDNJ. This was, for example, demonstrated earlier by the UMDNJ case of the Petitioners which had worked its way through the Third Circuit Federal Courts without serious consideration, and was submitted to the U.S. Supreme Court in May 2002 by the Petitioners, despite there most probably being an awareness by the lower courts of other whistleblower claims and corrupt and fraudulent activity by UMDNJ.

5. **The case tests the extent to which fraudulent claims are allowed by the courts.**

Again, this is of great importance both for legal considerations and for public policy. It is essential to preserve the integrity of the courts.

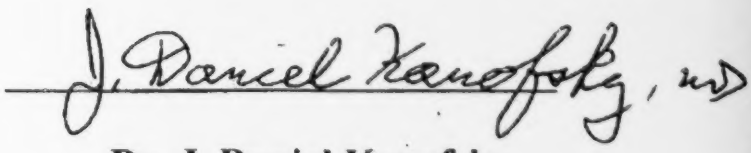
CONCLUSIONS:

This case is of tremendous legal and public policy importance,for all of the reasons given above. The Petitioners respectfully request that the U.S. Supreme Court grant their Petition for Writ of Certiorari.



Dr. Alvin S. Kanofsky

June 8, 2007



Dr. J. Daniel Kanofsky

APPENDIX A

August 19, 2005 Decision by Judge Innes to Turn Over Funds

The Court: Stark and Stark versus Daniel Kanofsky, docket number 2806-03.This is a motion to turn over funds. There's been no opposition from the defendants.

Plaintiff has obtained a judgment in the amount of over $36,000 back on September 24, 2004. Defendant has made no payment on that judgment. On April 26 of this year, the Sheriff of Essex County levied upon the defendant's bank account at Fidelity Brokers in the amount of 36, 786.34 Plaintiff now seeks to turn over the funds.

Plaintiff is entitled to the relief sought and I'll enter an order directing the Essex County Sheriff to turn those funds over to the plaintiff.

APPENDIX B

September 9, 2005 Decision by Judge Innes – On motion to Turn Over Funds, cross-motion to vacate final judgment, and to deny plaintiff's motion for turnover of funds.

The Court: This is Daniel Kanofsky, docket number 2806 –03. This is a motion for the turnover of funds, cross motion to vacate final judgment and to deny plaintiff's motion for the turnover of funds.

Plaintiff obtained judgment in the amount of $36,786.34 against the defendants back on August 19, 2005. A writ of execution was issued by the Sheriff of the County of Essex on April 26, 2005. Plaintiff was informed that the Sheriff did levy on the account of the defendant Daniel Kanofsky. The present balance together with all the subsequent costs is still unpaid and is due and owing to the plaintiff, and plaintiff seeks the turnover of funds.

The party holding the judgment may seek payment of that judgment from a delinquent by putting a levy on that party's bank account so long as notice is sent to the debtor party, R 6:7 – 1B. In order for the levy to result in the judgment creditor obtaining funds, the levy must be accompanied by a motion for the turnover of funds. NJSA 2A:17-63 "where the levy is properly made under Rule 4:59-1G and Rule 6:7-1B and service of the turnover motion has been made simultaneously by certified and ordinary mail at the debtor's last known address, the

application shall be granted unless either mailing has been returned by the postal service for any other reasons set forth R6:2-3D(4) indicating that the debtor has not received the moving papers."

Morristown Memorial Hospital v. Caldwell, 340 NJ Super 562 App. Div. 2001.Here the plaintiff has met all the aforementioned requirements and is entitled to the relief sought. With regard to the cross-motion to vacate the order , here defendants claim that the default judgment should not have been entered because an ethics grievance was been pursued. That ethics grievance however was dismissed shortly after it was filed.

Thus, defendants do not meet any of the criteria articulated in rule 4:50 –1 for vacation of the judgment. The motion to vacate judgment is denied. Plaintiff's motion for the turnover of funds is granted.

The Court: It appears that even though there is a slip for a new motion here for August 19, 2005 and also for today the slip is for a motion that was already heard by the Court and order entered on August 19. So that order will remain.

We will treat this as certainly a motion to vacate final judgment. The court finds that the defendant has failed to provide sufficient grounds under the rule to vacate the final judgment and his motion to vacate the final judgment is denied. Off the record.

APPENDIX C

October 12,2005 Decision by Judge Innes to Deny Motion to Reconsider Motion to Deny Turn Over Funds And Stay Previous Order

The Court:... Is Stark and Stark v. Kanofsky
It's Docket Number Mer – L- 2806-03. This is a motion to reconsider and stay an order to for turnover of funds and an order denying defendant's motion to vacate default judgment.

Rule 4:49-2 governs motions for reconsideration of an order or final judgment. Reconsideration is granted at the court's discretion and in the interest of justice; D'Altria v. "Altria, 242, N.J. Super. 392 (Chancery Division 1990).

Here the defendants contend that there were numerous improper procedures and misrepresentations by the plaintiff in the action to obtain the various court rulings and orders in the freezing of the funds. The defendants previous motion, as well as the circumstances surrounding this motion for reconsideration. The Court finds that the defendant has failed to demonstrate any good cause for the grant of the motion for reconsideration. Additionally, the defendants have not provided any new information which could not have been provided previously, nor have they pointed the Court to any matter that the Court may have overlooked. Consequently, the motion for reconsideration is denied

APPENDIX D

SUPERIOR COURT OF
NEW JERSEY

APPELLATE DIVISION
DOCKET NO. A – 1604 –05T2

STARK AND STARK, A Professional
Corporation,

Plaintiff, - Respondent

v.

J. DANIEL KANOFSKY, M.D.,
MPH and ALVIN S. KANOFSKY, PH.D.

Defendants- Appellants

Argued October 30, 2006 – Decided
November 17, 2006

Before Judges Lintner and S.L. Reisner.

On appeal from Superior Court of New Jersey,
Law Division, Mercer County, L-2806-03.

Alvin S. Kanofsky and Jacob Daniel Kanofsky,

Appellants, argued the cause pro-se.

Amy Beth Dambeck argued the cause for Respondents (Stark & Stark, attorneys; John E. MacDonald, of counsel; Ms. Dambeck, on the brief).

PER CURIAM

This is a dispute over legal fees between the law firm of Stark and Stark and its former clients, defendants J. Daniel Kanofsky, M.D. and Alvin Kanofsky, Ph.D. Defendants appeal from a trial court order dated October 12, 2005, denying their motion for reconsideration of the trial judge's prior order denying their motion to vacate a judgment in favor of plaintiff, Stark and Stark.

I

These are the most pertinent facts. Plaintiff represented defendants in a federal lawsuit. The parties had a dispute over plaintiff's legal fees and over its representation. After notifying defendants on September 22, 2003 of their right to demand fee arbitration pursuant to Rule 1:20A-6, plaintiff filed suit to collect its fees on October 29, 2003. On October 15, 2003 defendants filed an ethics grievance against the law firm,[1] but they did not file a request for fee arbitration.

Defendants defaulted in the lawsuit, and plaintiff obtained a final judgment by default on September 2004 In

their brief, defendants claim that J. Daniel Kanofsky was not properly served with the complaint at his home in Pennsylvania, although they do not deny that they were both aware of the lawsuit and that he received a copy of the complaint. They contend that they " did not make an appearance because they believe it violated the confidentiality requirements of the ethics grievance procedures."

After executing on a Fidelity account in the name of J.D. Kanofsky, plaintiff obtained an order to turn over funds on August 19, 2005. Thereafter, on or about August 22, 2005, defendants filed a motion to vacate the default judgment. In their motion, defendants claimed, among other things, that J.Daniel Kanofsky was not properly served with the complaint and that he did not live at 229 East Church Street, Bethlehem Pennsylvania, the address at which the plaintiff had served him by certified mail. However, defendants provided no certifications or other legally competent evidence to support their contentions. Moreover, the record contains a certified mail receipt sign by Alvin Kanofsky, accepting the complaint for his brother at the 229 East Church Street address. Judge Innes denied the motion to vacate default judgment on September 9, 2005.

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[1]The District Ethics Committee dismissed the ethics grievance on May 12, 2004, on the grounds that "the conduct complained of, even if proved, would not constitute ethical misconduct or incapacity."

Defendants then filed a motion for reconsideration of the September 9, 2005 order, alleging that plaintiff followed numerous improper procedures in obtaining and collecting the judgment. They contended that these have been described in detail in our previously filed brief and motion."

Judge Innes issued an oral opinion October 12, 2005, stating his reasons for denying the reconsideration motion. After noting that he had considered defendants prior motion to vacate the default judgment as well as the current motion, Judge Innes concluded that defendants had failed to establish good cause for the reconsideration motion and had not provided any new information which could not have been provided previously, nor have they pointed the Court to any matter that the Court may have overlooked." R. 4:49-2

II

Since defendants have only appealed from the October 12,2005 order, the only issue properly before us is whether Judge Innes erred in denying their motion for reconsideration. Having reviewed the record, we conclude that Judge Innes correctly denied the reconsideration motion, and that defendant's appellate arguments are " without sufficient merit to warrant discussion in a written opinion." R. 2:11-3(e) (1) (E). Moreover, even if we were to consider defendant's underlying motion to vacate the default judgment, we would conclude that the motion did not establish lack of proper service, excusable neglect, or any other grounds for relief under R. 4:50 –1.

Affirmed

November 17, 2006

I hereby certify that the foregoing is a true copy of the original on file in my office.

s/ John M. Chocko/

CLERK OF THE APPELLATE DIVISION

APPENDIX E

SUPREME COURT OF NEWJERSEY
C-672 September Term 2006, 60,575

STARK & STARK, ETC.

CORRECTED ORDER

Plaintiff-Respondent

ON PETITION FOR CERTIFICATION

v.

J. DANIEL KANOFSKY, M.D.,

Defendant,

ORDER FILED MARCH 12, 2007

and

ALVIN S. KANOFSKY, PH.D.

Defendant – Petitioner.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-1604-05 having been submitted to this court, and the Court and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Virginia A. Long, Presiding Justice, at

Trenton, this 21st day of February, 2007

s/ STEPHEN W. TOWNSEND/
CLERK OF THE SUPREME COURT

This is a copy of the exact
Order on file.